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Implementing Human Rights standards and the dialogue with local actors: the case of the Former Yugoslav Republic of Macedonia

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Implementing Human Rights standards and the dialogue with local actors: the case of the Former Yugoslav Republic of Macedonia[1]

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Introduction

This paper is a short overview of the research I have been carrying within my PhD project. I am looking for new approaches on how to conceive the ideal of national self-determination in multiethnic communities in which different national groups are spatially intertwined and where there are no direct match between nation and territory. I claim that the current understanding of self-determination, as equivalent to political independence (or external self-determination), is not enough as a step toward the full emancipation of all the members of the community. I intend to explore alternative dimensions of self-determination so this concept can encompass a more inclusive, long-standing and dynamic understanding and sideline a whole set of contradictions which lay at its basis.

I sought to avoid a merely political and institutional top-down approach on the protection of minorities, since these do not necessarily include social and economic dynamics which are central for the effective emancipation of individuals. Far from claiming that the political independence of a distinctive community is not an important element for its self-determination, I claim instead that a mere political approach to this concept might represent nothing more than the mere political control of a given territory by a new local elite; that would not add much to the daily lives of the population, even if they formally participate in political processes through regular elections.

As to the protection of minorities, the Framework Convention on the Protection of National Minorities (FCNM, 1995), within the framework of the Council of Europe

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(CoE), can be an interesting conventional starting point for my analysis, since it is the first (and the sole so far) international binding document specifically focused on minorities' human rights. The monitoring system of the FCNM includes both state reports and NGO "shadow reports", whose inputs are taken into account when the CoE Committee of Ministers drafts its Resolution on the periodic monitoring cycles.

In a first section, I will elaborate a little more on my argument and how I came to question the current practice of self-determination as political independence. The second section will be centered on the CoE and the building up of a European set of conventions, protocols and standard on human rights. Finally, the last section will explore the dialogue between the Republic of Macedonia, the Advisory Committee of the Framework-Convention (ACFC) and the local NGOs, as a platform where these different actors can interact in a horizontal and constructive manner.

National groups looking for some form of self-determination

Political independence as a sovereign state has been for decades the ultimate form of self-determination for national communities. This has been the main political principle behind the whole process of decolonization after World War II (WWII), but also the driving force behind some other non-colonial struggles in which a specific community aims at its self-determination from a broader community, based on ethnic grounds. One can acknowledge that the self-determination of former colonies is rather clear-cut: the anti-colonial struggle was conducted against imperial powers which illegitimately kept their domination on overseas territories, populations and resources. The potentially problematic drawing of borders was easily put aside as the principle of *uti possidetis*[3] was commonly adopted between the new post-colonial states.

But claims for self-determination in non-colonial contexts can be more problematic. The political independence of a new state is dependent on the recognition from the remaining international community (Cassese, 1995). Given that the rules, procedures and criteria for statehood are defined by inherently conservative actors (the states), there is not much room for the emergence of new states. Actually, except for the decolonization process and the dissolution of some federal states (the Soviet Union, Yugoslavia and Czechoslovakia), among the many movements for political independence since 1945, there were only two successful secession processes:

[3] The new states would keep the international borders defined under the colonial regimes, so as to avoid potentially dilacerating and never-ending disputes.

Bangladesh and South Sudan[4]. Common rules of international law, such as the territorial integrity/inviolability of borders and the non-interference in domestic issues, support an overall stance on the existent *status quo*. Secession would be accepted only as a last resort, *remedial* solution.

Other more practical factors can also be obstacles for a universal application of the principle of self-determination of peoples. First, there are economic constraints such as the economic viability of the new state-to-be or its dependence on international support. Second, geopolitical factors behind the support/non-support of the international community or the presence/absence of a relevant international sponsor to a specific secessionist attempt can be decisive for the final outcome of a secessionist movement. Third, territories are hardly ethnically homogenous; drawing new international borders based on idealized national territories is denied as there is no direct match between "nation" and "territory", as distinct populations are disseminated within that given territory. As a consequence of this mismatch, claims for self-determination based on ethnic grounds may lead to the creation of new forms of exclusion on the minorities remaining in the new state, either they were already minorities or not.

I started this section by stating that "political independence as a sovereign state has been for decades the ultimate form of self-determination for national communities". But what happens to communities which are denied political independence as the ultimate from of their self-determination? Would they thus be incomplete nations, compared to the ones that achieve statehood? Wouldn't it create categories of nations: the ones achieving statehood, the ones seeking statehood, and the ones whose statehood is denied? Is it correct to assume that political independence is the final stage of the self-determination process of a community? Is there anything beyond that stage that would allow a deeper understanding of self-determination? How to conceive the ideal self-determination of the peoples in multiethnic societies and how to assess an effective and inclusive participation of the whole population, regardless of their ethnic belonging and geographic location?

All this questioning leads us into considering whether self-determination as a dynamic process of emancipation of a specific community is actually fulfilled with political independence. My point would be that, as important as it can be for the self-

[4] I do not include East Timor in such a list of "secessions": it became independent from Indonesia in 2002, which invaded the territory when it still was a Portuguese colony; the latter formed a post-colonial federation with Ethiopia which split in 1993.

determination of a specific community, statehood does not bring automatically emancipation to the whole population within the new state. I do not claim that statehood is not important in the way to the self-determination of a community, but that it is not sufficient by itself in that emancipation move. Therefore, statehood is not an *end* in itself, but a *means* to self-determination as emancipation. Besides, it is excessively linked to the political control of a given territory by a previously excluded elite, since the mission of nationalist movements fades out as the nation achieves statehood. On the one hand, this approach on self-determination also ignores important social and economic factors in the shaping of an effectively emancipated community. On the other hand, since this new state legitimizes itself by claiming a specific ethnic background against the hegemony of a dominating community, this means that the smaller communities within it will not be a constitutive part of it and may become (or remain) new oppressed communities which can potentially claim for a state of their own. Thus national self-determination solely based on the political independence of each ethnic identity in a given territory may lead to the reproduction of some kind of ethnic hegemony, in a never ending secessionist discourse in an increasingly minor scale.

Having this in mind, I consider that a new approach to understand self-determination is required in order to assess the effective emancipation of all individuals in a given territory, regardless of their ethnic background. This understanding would require not only non-discrimination on ethnic grounds, but also the inclusion of ethnic minorities in every relevant political, social and economic dimension of the state. My analysis will not focus only on the *protection of minorities*, but rather on their *participation*.

A state of the art of the protection on minorities' human rights: the novelty of the FCNM

Within the European legal framework on the protection of human rights under the CoE, a rather individual approach was endorsed, the same way the UN system was. Its major legal outcome, the European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950), was essentially aimed at protecting *individuals*, no matter their national status or background. Actually, the only reference to "national minorities" in this Convention is included in Article 14 on the prohibition of discrimination. Any provision on the protection of national groups as such would not fit in its jurisdiction.

The end of the Cold War and the dissolution of the Soviet Union and of the Yugoslav Federation opened a new era in the understanding of human rights. On the one hand, genocide, ethnic cleansing, forcible displacements and other massive violations of human rights in former Yugoslavia highlighted a very fragile state of the art on international binding documents aiming at protecting entire populations living as structural minorities in a hostile state. On the other hand, the existing references to non-discrimination of national minorities in international covenants did not prevent systematic exclusion from the political, economical and social environment where they lived. Some important reflections started to be drafted within the scope of the Conference on Security and Co-operation in Europe (CSCE), such as in the Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE.

In 1995 the CoE launched a Framework-Convention on the Protection of National Minorities (FCNM), the first legally binding international text specifically focused on the minorities' human rights (Hoffman, 2005). After it came into force in 1998, all members of the CoE have gradually signed the document, except Andorra, France, Monaco and Turkey to this date.[5] Some of it features must be stressed. First, although within the scope of the CoE, the FCNM has not been adopted as an additional Protocol to the ECHR, as it could have been (Weller, 2005). Thus its ratification is optional and it is not covered by the judicial control of the European Court of Human Rights (Kicker and Möstl, 2012). Second, it is a "Framework-Convention", not a Convention, meaning that its content is not rigid on how to be implemented and allows the member states some flexibility on their action (Steketee, 2001). Third, the FCNM does not provide a definition for "national minorities" (Alfredsson, 2000); this was a pragmatic decision for this definition could have led to never-ending discussions and potentially block the whole document (Steketee, 2001). Thus it is up to each of the members states to define which human groups within their borders can be considered "minorities", or whether only "old" minorities, or both "old" and "new"[6] minorities can fit the concept (Hoffman, 2005).

Since the content of the FCNM can be understood as a set of loose guidelines (Weller 2005) on the protection of minorities and the resort to judicial mechanisms is not possible, the proper evaluation of the implementation of the FCNM took the form of a monitoring system based on states reports assessed by the Advisory Committee of the

[5] Belgium, Greece, Iceland and Luxembourg are signatory states but have not ratified it yet.
[6] The "new" minorities are the communities constituted through recent immigration.

Framework-Convention (ACFC) in close cooperation with the CoE Committe of Ministers (CM). It is an independent organ insofar as its members are 18 experts on minorities' rights elected from a short list suggested by the member states. The ACFC has a pivotal role in the whole monitoring process, since it outlines the rules on how the State Reports have to be drafted for each monitoring cycle; its Opinions on these State Reports are the backbone of the Resolutions the CoE Committee of Ministers issues on each state at the end of each monitoring cycle; and the experience accumulated by its experts allows the ACFC to elaborate Thematic Commentaries on specific issues.[7]

Each monitoring cycle has an approximate time span of five years, from the moment the rules for State Reports are set up, to the final CM Resolution on each specific country. The ACFC is responsible for receiving the State Reports and for issuing an Opinion on them, using information from other sources such as NGOs shadow reports; the Committee can also visit the state and meet with governmental agents, members of the Parliament, representatives of minorities, local NGOs and experts in the field of human rights (Steketee, 2001). After receiving the ACFC Opinion on their State Report, the state can draft a Comment and engage in a direct dialogue with the ACFC. Finally, the political element of the monitoring cycle is introduced at the moment the CM launches its Resolution on the situation of minorities' rights in each country; so far the content of these Resolution have been very close to the content of the ACFC Opinion, which is a clear evidence of the trust and the complementarity between this political body and the experts body (Hoffman, 2005; Beco and Lantschner, 2012).

Monitoring the application of the FCNM – The case of the Republic of Macedonia

My case study will be the Republic of Macedonia[8], a state in which minorities sum up more than 30% of the total population. The Albanian community is the largest minority in this state, around 25% of the population according to the last census in 2002; the remaining communities (Turks, Serbs, Romas, Bosniaks and Vlachs) are significantly

[7] So far, three Thematic Commentaries have been issued: on education (2006), on participation in cultural, social and economic life and in public affairs (2008) and on language rights (2012).

[8] I acknowledge the pending issue of the constitutional name of Macedonia (a member of the UN under the name of the "Former Yugoslav Republic of Macedonia, FYROM) which is still contended by Greece. The use of "Republic of Macedonia" in this paper shall not be seen as a political siding from the author.

smaller, each of them being less than 4% of the population. The tension between the Macedonian authorities and the Albanian population has been present in the domestic political debate since the independence from Yugoslavia in 1991. Although inter-ethnic violence has never led to a large scale war as in other former Yugoslav republics and although Albanian parties have been part of the governing coalitions ever since, the relations between ethnic Macedonian and Albanian have always been marked by distrust and sharp divisions.

The violent uprisings in Western Macedonia between Albanian armed groups and the Macedonian authorities in 2001 and the following Ohrid Framework Agreement constitute a turning point in the position of the Albanian population within the Macedonian state (Spaskovska, 2010). First, the Albanian language became an official national language, as a language representing at least 20% of the population; this threshold was also adopted at the local level, with varying results according to the ethnic balance in each municipality. Second, the Preamble of the Constitution was rephrased in order to put the different communities on a more equal footing, as the 1991 Constitution put a stronger emphasis on the Macedonian people as the core of the Republic. Third, a double majority rule was adopted in the Parliament for decisions in sensitive issues; this double majority implies a majority of the members of the Parliament *and* a majority of the members of the Parliament belonging to minorities. Fourth, a decentralization program was set in order to attribute extended powers to the municipalities towards a more effective local self-government, along with a redrawing of municipal borders and territorial reorganization (Friedman, 2009). Fifth, a set of legislation on equitable representation of the different ethnic communities in the public administration and in the police force was planned. Finally, higher education was extended to languages other than Macedonian; the threshold was also 20%, which allowed the existing Albanian University of Tetovo to be officially recognized.

Some of the major claims of the Albanian community since 1991 were accepted under this Agreement (Bieber, 2005) and their gradual implementation is ubiquitous when one evaluates the current status of the minorities in Macedonia. Nonetheless, the inclusive participation of ethnic minorities (either the Albanian or the others) did not improve overnight, and although the constitutional/legal changes achieved after 2001 were significant, their practical effects are not so clear. These events were determinant in the shaping of the inter-ethnic relations in the Republic of Macedonia and the

monitoring dialogue on the implementation of the FCNM, which coincidently started after 2001, was also greatly influenced.

The first round of monitoring in the Republic of Macedonia (2003-2005) started in 2003 when the first State Report was sent to the ACFC, four years after its due deadline in 1999. Following the guidelines provided by the ACFC on its outline, the report had extensive statistical data and political, economic and social indicators which would underline the distinctive living conditions between the different Macedonian communities. A second part of the report was structured upon the text of the FCNM, by matching its articles one by one to the legal and constitutional framework of the Republic of Macedonia. As accurate as this report outline can be, this solely quantitative and descriptive analysis based on the Constitution and the common national law lacks a deeper and more explanatory report which would have been more helpful in assessing the proper application of the FCNM. This, however, has been reverted in the following two rounds of monitoring, in which more dynamic guidelines have been provided to the national institutions responsible for producing the report.

In their Opinion to the first State Report (2005), the experts of the ACFC acknowledged the recent improvements made in the constitutional and legal framework of the Republic of Macedonia regarding the protection and participation of minorities and stressed the need to proceed with reforms in some key areas such as the political decentralization process and the use of minorities languages and alphabet in official documents. On the other hand, they also pointed to the fact that the armed conflict in 2001 is barely referred in the report and that representatives of the minorities have not been consulted in its elaboration. Moreover, some structural problems did persist and the effective implementation of the legal changes was somehow delayed.

The reaction of the Macedonian Government in its Commentary on the ACFC Opinion (2005) was almost harsh, stating that the Macedonian legislation on minorities went beyond the standards expected, implying that the evaluation of the ACFC was stepping ahead of its own function. However, the dialogue between the ACFC and the Government became easier during the two following rounds of monitoring (2006-2009 and 2010-2012) and the dialogue with the experts made possible. First, since the FCNM and its monitoring system are fairly recent, adjustments to its practices were made in order to rectify identified flaws in the process (Kicker and Möstl, 2012). Second, the Macedonian Government itself adopted a more collaborative attitude

towards its commitments to the FCNM. On the one hand, the Ministry of Foreign Affairs (the official body responsible for the monitoring process) called for the participation of local NGOs for elaborating the State Reports before they were officially sent to the ACFC. On the other hand, the Government sponsored the organization of seminars on the implementation of the FCNM between each round of monitoring, with the purpose of evaluating the finishing round and preparing the forthcoming one.

This more collaborative and dynamic approach has proven to be more fruitful since the dialogue between the Macedonian institutions, the local NGOs and the ACFC provides a more precise account on the living conditions of the minorities and on the further steps to be taken. Some of the most persistent negative aspects can be traced thanks to this more dialectic approach and which would have been much more limited with a mere description of the existing legislation, I will point to just a few. First, although education in the minorities' languages in the primary and secondary levels is legally possible and bilingual schools actually exist, many obstacles on the effective implementation of the education system remains. Pedagogical material is not sufficient; transport from remote areas to schools teaching minority languages may also lack; trained teachers are not sufficient either, since higher education in languages other than Macedonian was not an option, not a long time ago. Second, even though employment in public institutions has increased consistently, a significant part of these employees were hired in order only to artificially comply with the legislation on minorities' quotas and do not have proper functions or defined tasks in their jobs. This seems consistent with the fact that since independence, Albanian parties have always been part of the governing coalitions, but often with non-decisive positions or as mere deputies with no access to relevant information or to the actual decision-making process (XXX). Third, even though a Committee on the Relations between Ethnic Communities exists in the national Parliament as an advisory body and a mediator between the ethnic communities which assists the legislative process in sensitive issues; a similar mechanism has been conceived for municipalities in which a given minority represents more than 20% of the population. Nevertheless, this committee has had a very limited role so far and has been somehow sidelined by the Government itself in its task of consensus maker.

Within this mechanism of State reports and AFCF Opinions leading to the CM final Resolution based, the NGOs could have had a more direct input in the whole process,

through the possibility of preparing NGO Shadow Reports, as a complement to the State Reports. Any local NGO can elaborate its own Shadow Report and send it to the ACFC as an additional element for discussion. In the case of the Republic of Macedonia, three Shadow Reports have been issued and published in the ACFC official website: the Helsinki Committee for Human Rights in the Republic of Macedonia (1999), the Association for Democratic Initiatives (2001) and the Working Group for Minorities Issues (2004). The third one could have been an important starting point to a direct dialogue between the information provided by the State and the information provided by local NGOs, but there is no record of further NGO Shadow Reports after 2004.

Although relevant in the information they provide, they have been rather useless in the whole monitoring system they were meant for, since the first two of them have been written even before the first State Report has been sent to the ACFC. Besides, their quality is highly variable, if we compare the content of each one of them, not only their distinct structures and focus but also because deficient translation in some of them impedes a clear understanding of the text.

Concluding remarks

Assessing whether of a state policy complies with the FCNM cannot be done only by the mere fulfillment of a formatted checklist of legal and constitutional steps. As important as these steps can be, this compliance depends also on their effective implementation and on the way they can have a positive impact in people's everyday lives. In the specific case of the Republic of Macedonia, an evolution of the monitoring mechanism towards a more dynamic and dialectic relation with the ACFC proved that despite some significant improvements, being part of an ethnic minority is still a source of exclusion in several dimensions of one's life, falling short of the purpose of the FCNM. This more dynamic move enabled the ACFC to persistently point to some structural shortcomings in the Republic of Macedonia. For instance, though the 20% rule for recognizing language rights following the Ohrid Agreement was important in guaranteeing the rights of the Albanian population in acceding to the education system and being locally empowered, the strict application of this threshold had actually excluded most of the smaller communities. Consequently, the political debate has become polarized between the Macedonian majority and the Albanian community; the remaining communities which constitute about 10% of the population of the Republic

is still systematically sidelined, although there is legislation aimed at protecting communities representing less than 20% of the population. But above all, even if the different communities share the same physical environment, they live parallel existences without much inter-ethnic contacts or social and economic cohesion. This is particularly visible in education, in the media and in the party system.

I have tried to explore the possibility of looking into the participation of local organization as relevant actors for the inclusion of minorities through the monitoring system of the FCNM. Although these have gradually been active participants in the whole monitoring process and although the AFCF experts have met many NGOs during their visits to the Republic of Macedonia, the possibility of elaborating shadow reports has not been extensively used. I consider that, along with the dialogue with the national authorities and the ACFC, a continuous process of producing these shadow reports might have added a valuable input to the overall monitoring system. Whether the discontinuity of these shadow reports was caused by a renunciation of the ACFC to ask for them, or caused by the lack of means/will of the local organizations, is an avenue for a new deepening in my research.

Another aspect impeding a proper analysis of the current situation of minorities in the Republic of Macedonia is the fact that the last census has been carried in 2002. The procedures for carrying a new census in 2011 was interrupted and never reset ever since. Considering that the 1991 census was boycotted by the Albanian parties (and repeated in 1994) and that the 2002 census became a reality only after massive political pressure from the international community, realistic statistical data are missing both for assessment of implemented policies and for the implementation of new ones.

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